

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

ELDIE L. CRUZ, M.D.,

Plaintiff,

v.

Case No. 1:18-cv-00974-KBM-SCY

LOVELACE HEALTH SYSTEM, INC.,

et al.

Defendants.

JOINT MOTION TO CHANGE LOCATION OF TRIALS

COMES NOW Eldie Cruz, Plaintiff (“Plaintiff” or “Cruz”) and Lovelace Health System, Inc., Lovelace Health System, Inc. dba Lovelace Medical Group, Lovelace Health System, and Lovelace Medical Group (“Lovelace” or “Defendant”) (collectively, “the Parties”) and jointly move the Court to change the location of the trials in this matter to Albuquerque, New Mexico. In support of this motion, the Parties state the following:

1. This lawsuit was originally filed by Plaintiff in the Albuquerque Division on October 19, 2018. [Dkt. 1].
2. On December 3, 2019, the parties held a Rule 16 Conference before Judge Steven Yarbrough. Subsequently, the Court entered a Scheduling Order and additional orders setting the dates and locations for the Initial and Final Pre-trial Conferences and Bench Trial. [Dkt. 109, 111, 112, 113].
3. On December 19, 2019, the Court entered an Amended Order setting the Bench Trial on Plaintiff’s ERISA claims for June 7, 2021 through June 8, 2021 and the Jury Trial on

Plaintiff's ADA claims for June 9, 2021 through June 11, 2021. Both of the trials are located in Las Cruces, New Mexico, 440 Guadalupe Courtroom (North Tower). [Dkt. 115].

4. The Parties believe that there is good cause to move the trials to the federal courthouse in Albuquerque for the following reasons:

- a) Plaintiff currently resides in Albuquerque;
- b) The events giving rise to Plaintiff's ADA claims and Lovelace's defenses occurred in Albuquerque;¹
- c) All of the witnesses disclosed in Plaintiff's Initial Disclosures are located in Albuquerque;
- d) Lovelace's facilities where Plaintiff was employed or held medical privileges, as well as Lovelace's witnesses, are located in Albuquerque.
- e) The Parties anticipate that multiple physicians will be called to testify, whose medical practices will make it difficult for them to travel to Las Cruces to testify.

5. Rule 45 of the Federal Rules of Evidence permits the Court to require the attendance of witnesses 1) up to 100 miles from where the witness resides, is employed, or transacts business, or 2) within the state where the person resides, is employed, or regularly transacts business, if the person is a party or a party's officer or would not incur a substantial expense. Fed. R. Civ. P. 45(c)(1). Because Albuquerque is over 200 miles from Las Cruces, all of

¹ Plaintiff also brings ERISA claims, which will be determined based on the administrative record.

the witnesses will be required to travel a significant distance to attend the jury trial, which could create an undue burden and a substantial expense to the witnesses.

6. Thus, for the efficiency of the proceedings and convenience of the witnesses, the Parties respectfully request that the Court change the location of the trials to Albuquerque.

7. Notwithstanding the foregoing request, the Parties understand and acknowledge that the Honorable Judge Robert C. Brack, presiding over this case, is located in Las Cruces, and the Parties do not intend or seek to create any inconvenience for the Court. Rather, the Parties make this request in good faith and solely for the reasons previously stated.

8. As Defendant Reliance is only defending Plaintiff's ERISA claim, which will be decided based on the administrative record, Defendant Reliance takes no position on the location of the trials in this matter.

WHEREFORE, Plaintiff Cruz and Defendant Lovelace respectfully move the Court to change the location of the trials from Las Cruces, New Mexico to Albuquerque, New Mexico.

Respectfully submitted this 6th day of January, 2020.

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Lovelace Health System, and Lovelace Medical
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CERTIFICATE OF SERVICE

I certify that on January 6, 2020, I electronically filed the foregoing JOINT MOTION TO
CHANGE LOCATION OF TRIALS with the Clerk of Court using the CM/ECF system, which
will serve an electronic copy of this motion to all CM/ECF participants:

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